

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AIR CRASH INTO THE JAVA SEA ON JANUARY 9, 2021

MDL No. 3072

TRANSFER ORDER

Before the Panel:* Plaintiffs in the action listed on Schedule A (*Aprillia I*) move under Panel Rule 7.1 to vacate the order conditionally transferring the action to MDL No. 3072. Defendant The Boeing Company opposes the motion and supports transfer.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions transferred to MDL No. 3072, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order establishing MDL No. 3072, we held that centralization was warranted for actions concerning the January 9, 2021 crash of a Boeing 737-500 aircraft operated as Flight 182 by Indonesian airline Sriwijaya Air into the Java Sea off the coast of Indonesia. *See In re Air Crash Into the Java Sea on January 9, 2021*, __ F. Supp. 3d __, 2023 WL 2876934, at *2 (J.P.M.L. Apr. 7, 2023). We determined that the actions share common factual questions concerning the cause or causes of the crash and significant threshold questions as to “(1) whether admiralty or diversity jurisdiction lies over the actions; (2) whether the alleged location of significant evidence and witnesses in Indonesia warrants dismissal under the doctrine of *forum non conveniens*, as asserted by defendant Boeing; and (3) whether plaintiffs’ claims require the joinder of allegedly necessary parties such as Sriwijaya Air.” *See id.* Like the actions in the MDL, the *Aprillia I* action arises from the crash of Flight 182 and raises those same factual and legal questions. Moreover, *Aprillia I* involves sixteen of the same decedents at issue in another action in the MDL (*Aprillia II*).¹ We are persuaded that the just and efficient conduct of the litigation will be served by having the same court preside over pretrial proceedings in both *Aprillia* actions.

* Judge Karen K. Caldwell did not participate in the decision of this matter.

¹ *Aprillia I* and *Aprillia II* were filed days apart in Illinois state court in September 2022. The first-filed *Aprillia I* action was voluntarily dismissed without prejudice shortly after its filing, while *Aprillia II* moved forward. In October 2022, defendant removed *Aprillia II* to the Northern District of Illinois, and the action was transferred to the MDL pursuant to the initial transfer order filed April 7, 2023. *See In re Air Crash Into the Java Sea on January 9, 2021*, 2023 WL 2876934, at *3. Subsequently, in June 2023, the state court reinstated the *Aprillia I* action on plaintiffs’ motion. Defendant then removed *Aprillia I* to the Northern District of Illinois and filed a notice of potential tag-along action to commence its transfer to the MDL.

In opposition to transfer, movants principally argue that Section 1407(a) does not authorize transfer because, in their view, the MDL has lost its multidistrict character as a result of a recent settlement that purportedly leaves only actions from a single district pending in the MDL. But the MDL has not lost its multidistrict character. First, the settlement referenced by movants is a “settlement in principle” that defendant reached with plaintiffs in the actions originating in the Eastern District of Virginia. Defendant represents that the settlement has not been finalized, and those actions remain pending.²

Movants also object to transfer on jurisdictional grounds, noting that they have a pending motion for remand to state court which they believe the transferor court is in a superior position to resolve. As we explained in the initial transfer order, jurisdictional objections are not relevant to transfer. See *In re Air Crash Into the Java Sea on January 9, 2021*, 2023 WL 2876934, at *1 (“We regularly order transfer of actions over the objection that remand is required under applicable precedent. Transfer in these circumstances comports with the well-established principle that ‘Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand.’”) (quoting *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990)). Additionally, the transferee court is familiar with the issues raised in the remand motion, having ruled on substantially similar motions in the MDL.³

Lastly, movants assert that transfer would be unjust because of various alleged unfair litigation tactics by defendant, which they fear will deprive them of having their claims being tried in an American court. Such case management concerns about Boeing’s conduct are best raised before the transferee judge, who is well aware of the contours of this litigation. See, e.g., *In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018) (observing that concerns about “litigation delays” and other tactics were case management concerns and “[i]t is incumbent upon the parties to bring their concerns to the attention of the transferee court and to propose ways to resolve them”).

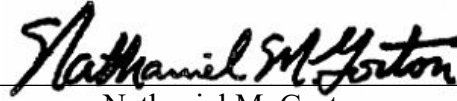
² Even if the tentatively settled actions presently were terminated, there still would be “civil actions . . . pending in different districts” under Section 1407(a) because the subject action (*Aprillia I*) is pending in the Northern District of Illinois, and there are ten non-settled actions pending in the Eastern District of Virginia transferee court. While those ten actions originated in the Northern District of Illinois, they are now “pending” in the Eastern District of Virginia because they were transferred to that district under Section 1407. See *In re Air Crash Into the Java Sea on January 9, 2021*, 2023 WL 2876934, at *3.

³ To the extent that movants oppose transfer because they disagree with the transferee court’s rulings, this is not a valid basis for opposing transfer. The Panel does not consider the “prospect of an unfavorable ruling by the transferee court or the possibility that another district judge may be more favorably disposed to a litigant’s contention . . . in exercising its discretion under Section 1407.” See *In re Eliquis (Apixaban) Prods. Liab. Litig.*, 282 F. Supp. 3d 1354, 1356 n.4 (J.P.M.L. 2017) (internal quotation marks and citations omitted).

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IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Eastern District of Virginia and, with the consent of that court, assigned to the Honorable Claude M. Hilton for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Nathaniel M. Gorton", is positioned above a horizontal line.

Nathaniel M. Gorton
Acting Chair

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

David C. Norton
Dale A. Kimball

IN RE: AIR CRASH INTO THE JAVA SEA ON JANUARY 9, 2021

MDL No. 3072

SCHEDULE A

Northern District of Illinois

APRILLIA, ET AL. v. THE BOEING COMPANY, C.A. No. 1:23-04649